

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**FILED  
SCRANTON**

FEB 07 2024

PER SP  
DEPUTY CLERK

DAVID J. CATANZARO, Plaintiff	§	
	§	CIVIL ACTION NO. 3:22-1754
Vs.	§	
	§	JUDGE MALACHY E. MANNION
	§	
WALMART STORES, INC., et al.,	§	JURY TRIAL DEMANDED
	§	

**NOTICE OF APPEAL**

Plaintiff-Appellant, David J. Catanzaro, hereby appeals to the United States Court of Appeals from the final order of dismissal entered in this action on January 8, 2024, by the United States District Court for the Middle District of Pennsylvania.

**A. NATURE OF CASE**

1. This case involves a civil action initiated by the Plaintiff, David J. Catanzaro, against Walmart Stores, Inc., et al.
  
2. During the course of the litigation, the court issued an order dated August 10, 2023, requiring the Plaintiff to identify "Does 1-50" within a specified timeframe. Due to purported mail delivery issues which were enhanced at the start of the COVID-19 pandemic and continue to this day, the Plaintiff contends that he did not receive this order in a timely manner and thus failed to meet the court-imposed deadline. A Motion for Reconsideration was subsequently filed by the Plaintiff, arguing the aforementioned mail delivery issues and requesting additional

time for compliance. This motion was denied by the court, leading to the dismissal of the case.

3. The Plaintiff asserts that the dismissal was procedurally and substantively unjust, given the circumstances surrounding the failure to receive the court's order and the actions taken thereafter. This appeal seeks to challenge the District Court's decision on both procedural and substantive grounds, with the aim of obtaining a reversal of the dismissal and a remand for further proceedings.

**B. DATE OF THE JUDGMENT OR ORDER APPEALED:**

4. The order appealed from was entered in the record on January 8, 2024.

**C. STATEMENT OF THE ISSUES:**

5. Did the District Court err procedurally in denying the Plaintiff's Motion for Reconsideration based on non-compliance with Local Rule 7.5, particularly considering the Plaintiff's pro se status and the alleged lack of receipt of the court's order?

6. Did the District Court violate the Plaintiff's due process rights by dismissing the case based on the Plaintiff's failure to comply with an order that he contends was not received due to mail delivery issues?

7. Was the time frame provided by the District Court for the Plaintiff to identify "Does 1-50" and amend the complaint reasonable, especially in light of the Plaintiff's pro se status and the challenges posed by the COVID-19 pandemic?

8. Should the District Court have provided additional leeway or assistance to

the Plaintiff, given his pro se status, in navigating the court's procedural requirements and in responding to the court's orders?

#### **D. LEGAL BASIS OF THE APPEAL**

9. The dismissal of the case by the District Court may have violated the Plaintiff-Appellant's procedural due process rights as guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution. This argument is predicated on the assertion that the Plaintiff-Appellant was not afforded a reasonable opportunity to respond to the court's order due to circumstances beyond his control, specifically the alleged failure of mail delivery.

10. The District Court's strict application of Local Rule 7.5, requiring a brief in support of the Motion for Reconsideration, may have been erroneous, especially considering the Plaintiff-Appellant's pro se status. Courts have often held that pro se litigants are entitled to a certain degree of leniency in procedural matters.

11. The appellate court may review whether the District Court appropriately exercised its judicial discretion in dismissing the case. This review considers whether equitable factors, such as the Plaintiff-Appellant's immediate action upon learning of the order and the broader context of mail delivery issues during and after the COVID-19 pandemic, were adequately weighed.

12. The appeal challenges whether the notice provided to the Plaintiff-Appellant and the opportunity to comply with the court's orders were adequate under the circumstances, particularly given the Plaintiff-Appellant's reliance on postal mail for court communications.

**E. REQUEST FOR RECORD AND TRANSCRIPTS**

13. In accordance with the Federal Rules of Appellate Procedure and relevant local court rules, the Plaintiff-Appellant, David J. Catanzaro, hereby requests the complete record and all transcripts of the proceedings in the District Court to be transmitted to the United States Court of Appeals as part of this appeal.

**F. RELIEF SOUGHT**

The Plaintiff-Appellant will respectfully seek the following relief from the United States Court of Appeals:

- i. Overturning the District Court's order of dismissal dated January 8, 2024, on the grounds that it was based on procedural errors, a lack of consideration for due process rights, and an inadequate assessment of equitable factors.
- ii. Remanding the case back to the District Court for further proceedings consistent with the appellate court's findings. This should include an opportunity for the Plaintiff-Appellant to properly identify "Does 1-50" within a reasonable timeframe and to amend the complaint as initially requested.
- iii. Directing the District Court to consider the Plaintiff-Appellant's pro se status in its management of the case, particularly in relation to procedural compliance and understanding of court orders.
- iv. Granting any additional equitable relief that the appellate court deems appropriate under the circumstances, recognizing the challenges faced by the Plaintiff-Appellant, including issues related to mail delivery and the impact of the COVID-19 pandemic.
- v. Awarding the Plaintiff-Appellant costs and fees associated with this appeal, as permitted under law and deemed appropriate by the court.

Dated: February 7<sup>th</sup> 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David J. Catanzaro', written over a horizontal line.

David J. Catanzaro  
Plaintiff *pro se*  
286 Upper Powderly Street  
Carbondale, PA 18407  
Phone: (570) 936-9262  
E-mail: [davidjosephus@aol.com](mailto:davidjosephus@aol.com)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was served on attorney for Respondent/Respondent, via email/mail, or US Post.

Dated: February 7<sup>th</sup> 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David J. Catanzaro', written over a horizontal line.

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